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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 10/039,395 | 11/07/2001 | Alan L. Backus | 67006-5045 | 3764 |

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EXAMINER

BECKER, DREW E

ART UNIT PAPER NUMBER

1761

| SHORTENED STATUTORY PERIOD OF RESPONSE | MAIL DATE | DELIVERY MODE |
|--|------------|---------------|
| 3 MONTHS | 01/17/2007 | PAPER |

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/039,395

Applicant(s)

BACKUS ET AL.

Examiner

Drew E. Becker

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 October 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10, 16 and 17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10, 16-17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Information Disclosure Statement

1. The information disclosure statement filed 3/31/06 fails to comply with 37 CFR 1.98(a)(2), which requires a legible copy of each cited foreign patent document; each non-patent literature publication or that portion which caused it to be listed; and all other information or that portion which caused it to be listed. The following references are missing: CH 603130A5, IT 555893, KR 206810. The information disclosure statement also fails to comply with 37 CFR 1.98(a)(3) because it does not include a concise explanation of the relevance, as it is presently understood by the individual designated in 37 CFR 1.56(c) most knowledgeable about the content of the information, of each patent listed that is not in the English language. In addition, the NPL references directed to court proceedings have not been considered since they are not accessible to the public are not relevant to the current application.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 9-10 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed,

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had possession of the claimed invention. Applicant has not pointed out these claim limitations are supported by the specification.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-8, 10, and 16-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pearlman et al [Pat. No. 5,801,362] in view of Perkins [Pat. No. 4,508,024].

Pearlman et al teach a device comprising an enclosure (Figure 1, #20), a constant radiant heat source (Figure 2, #27), cool-air holes (Figure 2, #44; Figure 3, #6), outside air introduction fans which also act as internal air movement fans (Figure 2, #42; Figure 3, #52), motors for the fans (Figure 2, #41; Figure 3, #54), a spit powered by the fan motor (Figure 6, #64), a controller for the heater comprising a start switch (Figure 12), and the controller cycling the heater on and off (column 11, line 61). Phrases such as "between about 20% on and about 70% on" and "constant heat" are merely preferred methods of operating the claimed apparatus. Pearlman et al do not recite an adjustable vent and temperature adjustor comprising a plate with holes, or a manual lever for the temperature adjustor. Perkins teaches a device comprising cool-air holes (Figure 1, #42), adjustable vents comprising a plate with holes (Figure 1, #46-47), a manual lever

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for the temperature adjustor (Figure 1, #44), and another temperature adjustor comprising a plate with holes and manual lever (Figure 1, #48-49). It would have been obvious to one of ordinary skill in the art to incorporate the vent features of Perkins into the invention of Pearlman et al since both are directed to cooking devices, since Pearlman et al already included cool-air holes and fans (Figure 2, #42 & 44; Figure 3, #6 & 52), and since the vents features of Perkins would have permitted more accurate and precise control of air flow in the device of Pearlman et al.

6. Claims 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Pearlman et al, in view of Perkins, as applied above, and further in view of Bedford et al [Pat. No. 5,639,497].

Pearlman et al and Perkins teach the above mentioned components. Pearlman et al and Perkins do not recite an electronic actuator. Bedford et al teach a device comprising a vent with an electronic actuator in the form of a solenoid (Figure 2, #43) and a gas heater (Figure 3, #12). It would have been obvious to one of ordinary skill in the art to incorporate the features of Bedford et al into the invention of Pearlman et al, in view of Perkins, since all are directed to cooking devices, since Pearlman et al already included a radiant heat source (Figure 2, #27), since Perkins already included a manual vent (Figure 1, #44), since Bedford et al teach that gas was an effective means for applying radiant heat in cookers (column 6, lines 9-30), and since the automatic damper control of Bedford et al would have eliminated the need for the operator to manually adjust the vent of Perkins.

Response to Arguments

7. Applicant's arguments filed 10/27/06 have been fully considered but they are not persuasive.

Applicant argues that claim 9 was supported by paragraph 0095. However, this paragraph does not mention "an electronic actuator".

Applicant argues that claim 10 is supported by paragraph 0093. However, this paragraph does not mention "only one level of heat". The set-up described in paragraph 0093 can easily be used with a heater having multiple settings. This paragraph simply described when the heater was shut off.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Pearlman et al is directed to a cooker with fans and vents, while Perkins is directed to a cooker with adjustable vents. It would have been obvious to one of ordinary skill in the art to incorporate the vent features of Perkins into the invention of Pearlman et al since both are directed to cooking devices, since Pearlman et al already included cool-air holes and fans (Figure 2, #42 & 44; Figure 3, #6 & 52), and since the adjustable vents of

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Perkins would have permitted more accurate and precise control of air flow in the device of Pearlman et al.

Conclusion

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Drew E. Becker whose telephone number is 571-272-1396. The examiner can normally be reached on Mon.-Fri. 8am to 4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


DREW BECKER
PRIMARY EXAMINER

1-9-07